

State Board of Forestry and Fire Protection

FINAL STATEMENT OF REASONS (FSOR)
Pursuant to GOV §11346.9(a)

“Utility Notice of Overhead Operations Amendments, 2016”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4:
Subchapter 1, Article 1
Amend: § 895.1
Subchapter 7, Article 2
Amend: § 1032.7**

**UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV
§11346.9(a)(1))**

Since the Initial Statement of Reasons (ISOR) was published the history of the development of this regulation has grown to include:

Non-substantive changes have taken place since the publishing of the ISOR on July 8th, 2016. Two sentences have been changed within the ISOR, on page 2 and page 4.

- On page 2 it has been modified to read, “The effect of this proposed action is to provide a requirement within 14 CCR § 1032.7 (“Plan Submittal and Notice of Intent.”), and defined in 14 CCR § 895.1 (“Definitions.”), entailing that landowners must notify via disclosure on the existing Notice of Intent (NOI) and contact or consult a PU whenever within proposed prescriptive distance standards (200 ft.) of overhead electrical power lines prior to initiation of any activity governed by the California Forest Practice Rules (FPRs) requiring a NOI as outlined in 14 CCR §1032.7.
- Page 4 has been modified to read, “The purpose of this proposed action is to state clearly and explicitly that whenever management activities governed by the FPRs requiring a NOI as outlined in 14 CCR §1032.7 are proposed for plan areas within a 200 ft. distance from powerlines, disclosure to the Department must take place.

These two edits were made to clarify the intent of the rulemaking package. Without these edits, it could be reasonably inferred by the regulated public that disclosure to the Department of powerlines, within a 200 ft. distance of the plan border, must occur for any timber management operation governed by the FPRs, via these two above statements. The Board wishes to clarify that this will be only required by this rulemaking, if chaptered, if the landowner is required to complete an NOI, as presently outlined within 14 CCR §1032.7.

Other than the edits described above, no information contained in the ISOR requires update, as published on June 08, 2016 as OAL Notice File #Z-2016-0628-03. All

material relied upon was identified in the ISOR and made available for public review prior to the close of public comment period.

SUMMARY OF BOARD'S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV §11346.2(b)(1)) (pursuant to GOV §11346.9(a)(1))

Since the rule text was published the history of the development of this regulation has grown to include:

Non-substantive changes have taken place since the publishing of the rule text on July 8th, 2016. Eight sub-sections have been changed within the rule text, on pages listed below:

- Page 2 of 4, §1032.7 (c): the word "if" was inserted at the end of the sentence to indicate a Notice of Intent is to be submitted if any of the conditions outlined in sub-sections 1032.7 (c) (1)-(5) exist in the area outlined in the Timber Harvesting Plan (THP).
- Page 2 of 4, §1032.7 (c) (1); the first word in the sentence "if" was deleted.
- Page 2 of 4, §1032.7 (c) (3): the words "if" and "that" were deleted to improve the grammar of the sentence,
- Page 2 of 4, §1032.7 (c) (4); the phrases "except a line(s) from transformers to service panels," and "the plan area or within" were added to improve clarity for the regulatory requirement to submit a Notice of Intent. The "inside or" was deleted to improve regulatory clarity.
- Page 2 and 3 of 4, §1032.7 (c) (5): the phrases "any overhead electric power line, except a lines(s) from transformers to service panels, is within" and "the new plan boundary" were added to improve clarity for the regulatory requirement to submit a Notice of Intent. The word "contains" and the phrase "an overhead electric power line" were deleted to improve regulatory clarity,
- Page 4 of 4, §1032.7 (d) (10): the word "on" and the letter "s" on the lines were deleted to improve grammar. The word "a" and the parenthesis letter "(s)" were added to improve grammar.
- Page 4 of 4, §1032.7 (g): the words "and (f) were underlined to show new text that was not underlined in the original proposed language.
- Page 4 of r, §1032.7 (h): the paragraph indicator of "(h)" is underlined to show a new subsection was added. It was not underlined in the original proposed language.

These eight edits to the regulatory text were made to either: 1) correct grammar, 2) correct punctuation or 3) improve clarity of the regulatory text. These edits also assure consistency with the regulatory reasoning in the ISOR outlined above.

REITERATION OF DISCLOSURES REGARDING THE ADOPTED REGULATION, RESULTS OF ECONOMIC IMPACT ANALYSIS, AND ANTICIPATED BENEFITS

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The adopted action:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California.
- (D) will yield nonmonetary benefits through improved implementation of the Forest Practice Rules that will yield improved resource protection, planning (efficiency in plan development and plan review), and enforcement (more enforceable and achievable).

Businesses will be beneficially impacted by the proposed regulation. Mandating that PUCs be notified of impending timber operations, and creating an avenue of opportunity for RPFs and LTOs to consult utility foresters, will allow more effective, safe and thorough timber harvest actions. This will provide an increase of merchantable timber being available to safely harvest, and will reduce the monetary burden of time, as allowing utility foresters to supervise and consult timber operations will make the stand entry much more effective.

The Board has determined that adoption of the regulations identified herein will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, instead businesses will be beneficially impacted by this action (pursuant to **GOV §11346.3(a)(2)**).

Mandate on local agencies and school districts (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a mandate on local agencies or school districts.

Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code sections commencing with GOV §17500 (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a reimbursable cost to any local agency or school district.

ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5)):

Except as set forth in the ISOR and provided in the summary, no other alternatives have been proposed or otherwise brought to the Board's attention. Based upon the findings below and a review of alternatives the Board has determined the following:

- No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.

- No alternative would be effective as and less burdensome to affected private persons than the adopted regulation.
- No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.
- No alternative considered would lessen any adverse economic impact on small business.

FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION

- The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of the proposed action.
- The Board finds that the public, including affected landowners and forestry professionals, and agency representatives, both Federal and State, reviewed and provided input to help the Board determine the best adopted alternative.
- The Board finds the adopted alternative strikes a balance between performance based and prescriptive standards.
- The Board finds that not instituting minimum prescriptive standards would lead to confusion, subjective enforcement, and exploitative interpretations of the regulation.
- The Board finds that lack of discourse and notification is occurring between landowners and PUs.
- The Board finds that PUs are finding it difficult to effectively manage their utility infrastructure, when landowners conduct timber operations around their infrastructure without proper notification prior to commencement of operations.
- The Board finds that contact and consultation with PUs will allow landowners to more effectively operate around utilities, increasing the economic return from timber operations.
- The Board finds that proper notification of PUs will increase the safety of both timber crews and the public, and mitigate the possible compromise of power delivery by PUs infrastructure.
- The Board finds that by ensuring the integrity of these power structures, that the risk of vegetative ignitions will be reduced, a priority especially as drought conditions continue to perpetuate in California.

- The Board finds that this rulemaking effort does increase the burden on either landowners or the PUs.
- The Board finds that no negative impacts can be reasonably attained by this rulemaking effort.
- The Board finds that this rulemaking package will not increase a timber harvesting burden on either parties.

BOARD'S ADOPTED ALTERNATIVE (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4)): Take Action as Proposed and Modified through the Formal Public Review and Comment Process (Alternative #4)

The Board chose to adopt the rule text as presented in the 45-Day Notice. No modifications, through the formal public review and comment process, were made.

Alternative #4: Take Action as Proposed and Modified through the Formal Public Review and Comment Process

This alternative would result in clearly stating when disclosure is required of active power lines and contact must be made with the appropriate PU. By adopting the "Utility Contact List" definition to 14 CCR § 895.1, and increasing the specificity of 14 CCR § 1032.7 on what is required in the NOI when within the prescriptive standards of power lines, will allow for numerous benefits with only nominal costs to both landowners and PUs.

The proposed action does not change the application of the FPRs, but clarifies and introduces new language regarding operations within the vicinity of active power lines, and when notification of the Department and PUs is required.

This is the preferred alternative as it fulfills the obligations, specified in statute, of the Board and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of the proposed action. Public and agency representatives have reviewed the proposed action and provided input, which is reflected in the proposed regulation. The Board found that the proposed action clarified the intent of the FPRs, introduced benefits to both the landowner and PUs and would not result in application of the FPRs in terms of where the Board did not intend for them to apply.

BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4))

The Board has considered the following alternatives and rejected all but alternative #4.

Alternative #1: No Action

This alternative would result in not adopting 14 CCR § 895.1 definition of a “Utility Contact List” and not amending § 1032.7 to require disclosure whenever timber management activities governed by the FPRs are either within the immediate plan area or 200 ft. of its boundary with the appropriate utility company person or designee.

This alternative was rejected because maintaining the existing language in the FPRs would not address the need for an explicit mandate for disclosure to both CAL FIRE and the respective PU when timber operations will be occurring within the proposed vicinity of power lines. The Board rejected this alternative, because not adopting these proposed amendments would not establish the goals of increasing economic returns for landowners, reducing safety risks to both life and property, and lowering of the level of fire danger imposed by utility power lines.

Alternative #2: Take Action to Increase the Specificity of the Regulation Needed to Implement the Statute

This alternative would increase the specificity of the regulation needed to implement the statute.

The Board rejected increasing the specificity of the regulation needed to implement the statute in recognition of the diversity in timberland, management and mitigations and to keep a very clear and explicit mandate of prescriptive standards. Increasing the specificity of the regulation would make these proposed regulatory amendments unnecessarily complex. The increase in specificity would also increase time and monetary expenditures by PU’s and timberland owners, defeating the purpose and intent of these proposed amendments.

Alternative #3: Take Action to Decrease the Specificity of the Regulation Needed to Implement the Statute

This alternative would decrease the specificity of the regulation needed to implement the statute.

The Board rejected decreasing the specificity of the regulation that is proposed. Decreasing its specificity would allow the proposed regulation to be subject to multiple interpretations, which would result in lax usage and ineffective enforcement. Not specifying that the disclosure and notification must occur within the proposed prescriptive standards would defeat the purpose of this proposed action, and would not increase quality discourse and working relationships between landowners and PUs. Not mandating this action would lead to poor adherence of these proposed regulations.

Alternative #4: Take Action as Proposed and Modified through the Formal Public Review and Comment Process

This alternative would result in clearly stating when disclosure is required for active power lines and contact must be made with the appropriate PU. By adopting the “Utility Contact List” definition to 14 CCR § 895.1, and increase the specificity of 14 CCR § 1032.7 on what is required in the NOI when within the prescriptive standards of power

lines, will allow for numerous benefits with only nominal costs to both landowners and PUs.

The proposed action does not change the application of the FPRs, but clarifies and introduces new language regarding operations within the vicinity of active power lines, and when notification of the Department and PUs is required.

SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g. W1-8: John Doe, Healthy Forest Association).

S: Indicates the comment was received from a speaker during the Board hearing on the 45-Day Notice of proposed rulemaking.

W: Indicates the comment was received in a written format.

1st number: Identifies the comments in the order in which it was received.

2nd number (following the hyphen): Represents the specific comment within a written comment or speaker comment. The specific comments are numbered in the order in which they were presented.

SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))

WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED July 08, 2016

No comments, either written or in the form of other media, was received during the 45-day public comment period.